

THE HON'BLE MS JUSTICE G.ROHINI

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WRIT PETITION NO: 28159 of 2005

Dated: 18-03-2006

Between:

Toddy Tapers Co-operative Society Limited,
Raja Ram Pally village of Velgatur Mandal of
Peddapally Station, rep., by its Chief Promoter
MeruguRajaiah,
Karimnagar District.

..... PETITIONER

AND

The District Collector (Excise),
Karimnagar District and five others.

.....RESPONDENTS

THE HON'BLE MS JUSTICE G.ROHINI

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WRIT PETITION NO : 28159 of 2005

ORDER:

This writ petition is filed seeking a declaration that the proceedings of the

second respondent-Commissioner of Prohibition and Excise dated 29-12-2005 as arbitrary and illegal.

In pursuance of the Excise (Toddy) Policy guidelines for the year 2004-2005, the second respondent-Commissioner of Prohibition and Excise vide proceedings dated 28-01-2005 accorded sanction for establishment of toddy shop by the Tappers Co-operative Society at Rajarampally village for the excise year 2004-2005. Accordingly, the fourth respondent- Prohibition and Excise Superintendent, Karimnagar, who is Functional Registrar vide proceedings dated 25-02-2005 registered the petitioner society – Toddy Tappers Co-operative Society Limited, Rajarampally under the provisions of the A.P. Co-operative Societies Act, 1964 (for short 'the Act') with 13 members. The area of operation of the society has been mentioned as Rajarampally village. However, the petitioner society alleges that though the necessary amounts were paid towards the licence fee, the licence for sale of toddy at Rajarampally village has not been issued. Aggrieved by the same, the petitioner society filed W.P.No.21300 of 2005, which was disposed of by this Court by order dated

30-09-2005 with a direction to the respondents to take appropriate decision on merits in accordance with law on the representation of the petitioner dated 02-09-2005 in which they sought for grant of licence as per the sanction order dated 25-02-2005.

While so in the meanwhile, the sixth respondent society-Toddy Tappers Co-operative Society, Endapally village filed W.P.No.2603 of 2005 seeking a declaration that the action of the respondents in not considering their representation dated 30-01-2005 opposing the constitution of separate Co-operative Society for Rajarampally village and sanction of toddy shop at Rajarampally village is arbitrary and illegal. Their case was that Rajarampally village forms part of Endapally Revenue village and therefore, registration of separate Tappers Co-operative Society is not permissible. The said writ petition was disposed of by this Court by order dated 17-02-2005 directing Commissioner of Prohibition and Excise and Superintendent of Prohibition and Excise to consider the representation of the petitioner therein dated

30-01-2005 before any permission is accorded for constitution of separate Toddy Co-operative Society for Rajarampally village.

However, it appears that even before receiving the order in W.P.No.2603 of 2005, the fourth respondent-Superintendent of Prohibition and Excise, Karimnagar, had registered the petitioner society vide proceedings dated 25-02-2005. In the circumstances, the fourth respondent addressed a letter dated 09-03-2005 seeking clarification from the second respondent. In pursuance thereof, the second respondent called for a report from the Deputy Commissioner of Prohibition and Excise. On receipt of such report, dated 30-04-2005, the second respondent passed an order dated 29-12-2005 rejecting the proposals for formation of new Tappers Co-operative Society at Rajarampally village. While passing the said order, the second respondent had also taken into consideration the report of the Mandal Revenue Officer, Velgatur dated 27-01-2005 in which it is stated that though Rajarampally Gram Panchayat was separated from Endapally under a notification published in the District Gazette dated 28-06-2005, the same has not been implemented till date and that Rajarampally village is not an independent revenue village and the revenue records were not separated. The said order dated 29-12-2005 is under challenge in this writ petition.

I have heard the learned counsel for both the parties and perused the material on record.

At the outset, it is to be noted that the fourth respondent, who is the Functional Registrar so far as the Tappers Co-operative Societies are concerned, is the competent authority under Section 6 of the Act and in exercise of the said powers the petitioner society was registered vide proceedings dated 25-02-2005. It is not in dispute that long prior to that, Rajarampally village was bifurcated from Endapally village and it was published so in the District Gezette dated 04-07-2002. However, the second respondent, while relying upon the report of the Mandal Revenue Officer, Velgatur that the bifurcation has not been implemented and that Rajarampally village is not functioning as an independent revenue village, passed the impugned proceedings. The question is whether the impugned proceedings under which the second respondent rejected the proposals for formation of the petitioner society in spite of the fact that it was already registered by the fourth respondent is sustainable under law.

Admittedly, the petitioner society with Rajarampally village as area of operation

was already registered. Once the society has been registered under Section 6 of the Act, it can either be deregistered under Section 9-B of the Act by the Registrar himself or aggrieved party can prefer an appeal under Section 76 of the Act. However, the second respondent who is not delegated with the powers exercisable under the provisions of the Act, cannot on his own set aside the registration even without issuing a notice to the society. As a matter of fact, under the impugned proceedings, the second respondent rejected the proposals for formation of the new Tappers Co-operative Society at Rajarampally in spite of the fact that the registration has already taken place. Thus the order of the second respondent dated 29-12-2005 appears to be superfluous. At any rate, undoubtedly the said order, which was passed merely on the basis of the report of the Mandal Revenue Officer, without any notice to the petitioner society, is not only arbitrary and illegal but also in violation of principles of natural justice. Hence, the said proceedings are liable to be set aside on that ground alone.

As expressed above, once the society is registered under Section 6 of the Act, the only remedy available is to challenge the same by preferring an appeal under Section 76 of the Act. That apart, under Section 9-B of the Act, the Registrar is competent to deregister the society particularly when the society was registered by fraud or misrepresentation of facts.

Therefore, the functional Registrar himself has to consider the matter after affording due opportunity to the petitioner society as well as the sixth respondent society and pass appropriate orders in accordance with law.

Accordingly, the impugned proceedings dated 29-12-2005 are set aside and the writ petition is disposed of with a direction to the fifth respondent to consider the objections raised by the sixth respondent society after affording due opportunity to the petitioner society to put forth their version and pass appropriate orders in accordance with law as expeditiously as possible preferably within a period of three weeks from the date of receipt of a copy of this order. It is also made clear that in case the objections raised by the sixth respondent society are found untenable, the fifth respondent shall take immediate steps for grant of licence to the petitioner society. No costs.

G.ROHINI,J

Dated: 18-03-2006

Klp